

EXHIBIT 8

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**WAPP TECH LIMITED PARTNERSHIP
and WAPP TECH CORP.,**

Plaintiffs,

V.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 4:21-cv-00670-ALM

Jury Trial Requested

**WAPP TECH LIMITED PARTNERSHIP
and WAPP TECH CORP.,**

Plaintiffs,

V.

WELLS FARGO BANK, N.A.,

Defendant.

Case No. 4:21-cv-00671-ALM

Jury Trial Requested

WAPP'S P.R. 4-2 PRELIMINARY CLAIM
CONSTRUCTIONS AND EXTRINSIC EVIDENCE

Pursuant to P.R. 4-2 and this Court’s Patent Scheduling Orders (670 Case, Dkt No. 37; 671 Case, Dkt. No. 33), Plaintiffs Wapp Tech Limited Partnership and Wapp Tech Corp. (“Wapp”) serve their Preliminary Claim Constructions and Extrinsic Evidence for U.S. Patent Nos. 8,924,192 (the “192 patent”); 9,298,864 (the “864 patent”); 9,971,678 (the “678 patent”); 10,353,811 (the “811 patent”); and 10,691,579 (the “579 patent”) (collectively the “Patents-in-Suit”). Wapp reserves the right to modify and/or supplement the following preliminary claim constructions and identification of extrinsic evidence based on, without limitation, the preliminary constructions and extrinsic evidence propounded by the Defendants pursuant to this Local Rule, the meet and confer

sessions the Local Rules mandate, and information learned through the course of discovery.

In connection with this disclosure, Wapp is serving, by separate link, extrinsic evidence on Defendants as WAPP_MARKMAN_0000001 - WAPP_MARKMAN_0001383.

I. Agreed Constructions

Based on the meet and confer process, the parties agree that the Court's prior constructions in *Wapp Tech Limited Partnership and Wapp Tech Corp. v. Seattle Spinco, Inc. et al.*, No. 4:18-cv-00469-ALM, Dkt. No. 176 (E.D. Tex. Apr. 27, 2020); *Wapp Tech Limited Partnership and Wapp Tech Corp. v. Wells Fargo & Co.*, No. 4:18-cv-00501-ALM, Dkt. No. 82 (E.D. Tex. Apr. 27, 2020); and *Wapp Tech Limited Partnership and Wapp Tech Corp. v. Bank of America Corp.*, No. 4:18-cv-00519-ALM, Dkt. No. 81 (E.D. Tex. Apr. 27, 2020) apply in this case, as follows:

Term	Agreed Construction
“system for testing an application for a mobile device” ('864 Patent, Claim 1) ('678 Patent, Claim 45)	The preambles are limiting; plain meaning
“system for developing an application for a mobile device” ('192 Patent, Claim 1)	The preambles are limiting; plain meaning
“application” ('192 Patent, Claim 1) ('864 Patent, Claim 1) ('678 Patent, Claim 45)	Plain meaning
“simulate” ('192 Patent, Claim 1) ('864 Patent, Claim 1) ('678 Patent, Claim 45) ('811 Patent, Claims 1, 8, 22, 24) ('579 Patent, Claims 1, 7, 19)	“emulate”
“simulating” ('579 Patent, claim 11)	“emulating”
“emulate”	Plain meaning

Term	Agreed Construction
('192 Patent, Claim 1) ('579 Patent, Claims 14, 26)	
“simultaneously visually [simulate/emulate], via one or more profile display windows” ('192 Patent, Claim 1) ('678 Patent, Claim 45)	“emulate simultaneously, and display one or more windows showing resources of the mobile device that are available to the application”
“simulate, via one or more profile display windows” ('864 Patent, Claim 1)	“emulate, and display one or more windows showing resources of the mobile device that are available to the application”
“configured to” ('192 Patent, Claim 1) ('864 Patent, Claim 1) ('678 Patent, Claim 45)	“actually programmed to”
“the software” ('678 Patent, Claim 45)	The antecedent basis for “the software” is “a software testing interface” in Claim 45 of the '678 Patent.

II. Preliminary Claim Constructions

Term to be Construed	II's Proposed Construction	Extrinsic Evidence
“a software authoring interface configured to simultaneously visually emulate, via one or more profile display windows, a plurality of network characteristics indicative of performance of the mobile device when executing the application ... further configured to simulate a network connection state encountered by the mobile device” (Δ) ('192 Patent, Claim 1)	With respect to the terms that overlap with the agreed terms set forth above, those terms should be construed in accordance with the agreed constructions. With respect to the other terms, no construction necessary beyond plain meaning.	All claim construction briefing (Dkt. Nos. 154, 164, 167, 171, 174), exhibits thereto, and the Court's Markman order (Dkt. No. 176) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Seattle Spinco, Inc. et al.</i> , No. 4:18-cv-00469-ALM, (E.D. Tex.). All claim construction briefing (Dkt. Nos. 61, 70, 73, 77, 80), exhibits thereto, and the Court's Markman order (Dkt. No. 82) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Wells Fargo & Co.</i> , No. 4:18-cv- 00501-ALM, (E.D. Tex.). All claim construction briefing (Dkt. Nos. 60, 69, 72, 76, 79), exhibits thereto, and the Court's Markman order

Term to be Construed	II's Proposed Construction	Extrinsic Evidence
		(Dkt. No. 81) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Bank of America Corp.</i> , No. 4:18-cv-00519-ALM, (E.D. Tex.).
<p>“the software authoring interface is configured to enable a user to select from one or more connection simulations for testing how well mobile content performs on the mobile device” (Δ)</p> <p>(’192 Patent, Claim 2)</p>	<p>With respect to the terms that overlap with the agreed terms set forth above, those terms should be construed in accordance with the agreed constructions. With respect to the other terms, no construction necessary beyond plain meaning.</p>	<p>All claim construction briefing (Dkt. Nos. 154, 164, 167, 171, 174), exhibits thereto, and the Court’s Markman order (Dkt. No. 176) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Seattle Spinco, Inc. et al.</i>, No. 4:18-cv-00469-ALM, (E.D. Tex.).</p> <p>All claim construction briefing (Dkt. Nos. 61, 70, 73, 77, 80), exhibits thereto, and the Court’s Markman order (Dkt. No. 82) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Wells Fargo & Co.</i>, No. 4:18-cv-00501-ALM, (E.D. Tex.).</p> <p>All claim construction briefing (Dkt. Nos. 60, 69, 72, 76, 79), exhibits thereto, and the Court’s Markman order (Dkt. No. 81) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Bank of America Corp.</i>, No. 4:18-cv-00519-ALM, (E.D. Tex.).</p>
<p>“software configured to simulate, via one or more profile display windows, a plurality of network characteristics indicative of performance of the mobile device when executing the application” (Δ)</p> <p>(’864 Patent, Claim 1)</p>	<p>With respect to the terms that overlap with the agreed terms set forth above, those terms should be construed in accordance with the agreed constructions. With respect to the other terms, no construction necessary beyond plain meaning.</p>	<p>All claim construction briefing (Dkt. Nos. 154, 164, 167, 171, 174), exhibits thereto, and the Court’s Markman order (Dkt. No. 176) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Seattle Spinco, Inc. et al.</i>, No. 4:18-cv-00469-ALM, (E.D. Tex.).</p> <p>All claim construction briefing (Dkt. Nos. 61, 70, 73, 77, 80), exhibits thereto, and the Court’s Markman order (Dkt. No. 82) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Wells Fargo & Co.</i>, No. 4:18-cv-00501-ALM, (E.D. Tex.).</p>

Term to be Construed	II's Proposed Construction	Extrinsic Evidence
		<p><i>Fargo & Co.</i>, No. 4:18-cv-00501-ALM, (E.D. Tex.).</p> <p>All claim construction briefing (Dkt. Nos. 60, 69, 72, 76, 79), exhibits thereto, and the Court's Markman order (Dkt. No. 81) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Bank of America Corp.</i>, No. 4:18-cv-00519-ALM, (E.D. Tex.).</p>
<p>"a software testing interface configured to simultaneously visually simulate, via one or more profile display windows, a plurality of operator network characteristics including at least bandwidth availability indicative of performance of the mobile device when executing the application" (Δ)</p> <p>('678 Patent, Claim 45)</p>	<p>With respect to the terms that overlap with the agreed terms set forth above, those terms should be construed in accordance with the agreed constructions. With respect to the other terms, no construction necessary beyond plain meaning.</p>	<p>All claim construction briefing (Dkt. Nos. 154, 164, 167, 171, 174), exhibits thereto, and the Court's Markman order (Dkt. No. 176) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Seattle Spinco, Inc. et al.</i>, No. 4:18-cv-00469-ALM, (E.D. Tex.).</p> <p>All claim construction briefing (Dkt. Nos. 61, 70, 73, 77, 80), exhibits thereto, and the Court's Markman order (Dkt. No. 82) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Wells Fargo & Co.</i>, No. 4:18-cv-00501-ALM, (E.D. Tex.).</p> <p>All claim construction briefing (Dkt. Nos. 60, 69, 72, 76, 79), exhibits thereto, and the Court's Markman order (Dkt. No. 81) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Bank of America Corp.</i>, No. 4:18-cv-00519-ALM, (E.D. Tex.).</p>
<p>"network characteristics" (Δ)</p> <p>('192 Patent, Claim 1)</p> <p>('864 Patent, Claim 1)</p> <p>('678 Patent, Claim 45)</p> <p>('579 Patent, Claims 25, 26)</p>	<p>No construction necessary beyond plain meaning</p>	<p>All claim construction briefing (Dkt. Nos. 154, 164, 167, 171, 174), exhibits thereto, and the Court's Markman order (Dkt. No. 176) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Seattle Spinco, Inc. et al.</i>, No. 4:18-cv-00469-ALM, (E.D. Tex.).</p>

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<p>"indicative of" (Δ)</p> <p>('192 Patent, Claim 1)</p> <p>('864 Patent, Claim 1)</p> <p>('678 Patent, Claim 45)</p> <p>('811 Patent, Claims 1, 4, 9, 22, 24)</p> <p>('579 Patent, Claim 7)</p>	<p>No construction necessary beyond plain meaning</p>	<p>All claim construction briefing (Dkt. Nos. 154, 164, 167, 171, 174), exhibits thereto, and the Court's Markman order (Dkt. No. 176) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Seattle Spinco, Inc. et al.</i>, No. 4:18-cv-00469-ALM, (E.D. Tex.).</p> <p>All claim construction briefing (Dkt. Nos. 61, 70, 73, 77, 80), exhibits thereto, and the Court's Markman order (Dkt. No. 82) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Wells Fargo & Co.</i>, No. 4:18-cv-00501-ALM, (E.D. Tex.).</p> <p>All claim construction briefing (Dkt. Nos. 60, 69, 72, 76, 79), exhibits thereto, and the Court's Markman order (Dkt. No. 81) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Bank of America Corp.</i>, No. 4:18-cv-00519-ALM, (E.D. Tex.).</p>

Term to be Construed	II's Proposed Construction	Extrinsic Evidence
<p>“the selected characteristics” (Δ) (’579 Patent, Claim 1)</p>	<p>No construction necessary beyond plain meaning</p>	<p>All claim construction briefing (Dkt. Nos. 154, 164, 167, 171, 174), exhibits thereto, and the Court’s Markman order (Dkt. No. 176) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Seattle Spinco, Inc. et al.</i>, No. 4:18-cv-00469-ALM, (E.D. Tex.).</p> <p>All claim construction briefing (Dkt. Nos. 61, 70, 73, 77, 80), exhibits thereto, and the Court’s Markman order (Dkt. No. 82) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Wells Fargo & Co.</i>, No. 4:18-cv-00501-ALM, (E.D. Tex.).</p> <p>All claim construction briefing (Dkt. Nos. 60, 69, 72, 76, 79), exhibits thereto, and the Court’s Markman order (Dkt. No. 81) from <i>Wapp Tech Limited Partnership and Wapp Tech Corp. v. Bank of America Corp.</i>, No. 4:18-cv-00519-ALM, (E.D. Tex.).</p>

III. Description and Production of Extrinsic Evidence

A. Written Materials

Wapp is producing copies of the extrinsic evidence cited above simultaneously herewith.

B. Expert Testimony

To the extent expert witnesses are involved in the *Markman* process, Wapp identifies Dr. Sam Malek, who has been previously disclosed to Defendants. At this time, Wapp intends to rely on the testimony of Dr. Malek to rebut Defendants’ constructions and support Wapp’s constructions, if Defendants’ P.R. 4-2 disclosures state that Defendants intend to rely on the testimony of one or more expert witnesses to support their claim constructions.

Dated: March 10, 2022

Respectfully submitted,
/s/ R. Allan Bullwinkel

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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via email on March 10, 2022.

/s/ R. Allan Bullwinkel

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